



January 28, 2020

Christi Grimm
Principal Deputy Inspector General
HHS Office of Inspector General
330 Independence Avenue SW
Washington, DC 20201

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Dear Principal Deputy Inspector General Grimm:

As the Health Care Task Force of The Leadership Conference on Civil and Human Rights, a coalition of more than 220 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, we are writing to you in support of a complaint submitted to your office on September 6, 2019 by the Center for Reproductive Rights related to potential waste, fraud, or abuse in the Department of Health and Human Services' (HHS) programs and operations. The complaint alleges that the HHS Office for Civil Rights (OCR) is misallocating funding and resources to the Conscience and Religious Freedom Division (CRFD) potentially in violation of the Health Information Technology for Economic and Clinical Health Act (HITECH) and in derogation of its legal obligations to enforce civil rights and the privacy and security of patient information. The diminution of OCR's enforcement of civil rights protections in health care harms the very people the Division was created to protect; conducting an investigation into the complaint's allegations is vital to ensuring proper protection.

As the Center for Reproductive Rights' complaint explains in detail, the CRFD received budget increases in FY2019 and FY2020 despite cuts to the OCR's budget in both fiscal years. Of the four operating divisions within OCR, CRFD was the only division to receive an increase in both years; the other three saw budget decreases in FY2019 and two received decreases in FY2020.¹

The increases occurred even though CRFD received a small number of complaints. In October, lawyers for HHS admitted in federal court that the number of complaints alleging religious discrimination in FY2018 was as low as 20 complaints in total.² HHS previously stated that the number of complaints was 1,333 and in another instance stated the number was 343 complaints.³ A federal court subsequently found that HHS' statement that there was

¹ The CRD was the other division to receive an increase in the amount of \$57,000. CRFD received an increase of \$1,071,000.

² *New York v. United States Dep't of Health and Human Svcs.*, No. 1:19-cv-04676 (PAE) Doc. 248 at 80 (Nov. 11, 2019).

³ <http://www.rollcall.com/news/trump-civil-rights-official-wants-defend-abortion-opponents-religious-freedom>; *New York v. United States Dep't of Health and Human Svcs.*, No. 1:19-cv-04676 (PAE) Doc. 248 at 80 (Nov. 11, 2019).

an increase in conscience complaints in the time period leading up to rulemaking – the same time period in which the CRFD was created – “was factually untrue.”⁴

In contrast, the HHS FY2020 Budget stated that OCR *overall* received 33,194 complaints in FY2018.⁵ Twenty complaints is a microscopic percentage of the total number of complaints OCR has received; even the highest number reported by HHS (1,333) represents only about 4 percent of the complaints. As is detailed in the complaint filed with your office, allocation of staff seems to be similarly disproportionate among the divisions – raising serious concerns about whether the OCR is acting as a responsible steward and fulfilling its legal duty to enforce federal civil rights laws and patient privacy laws.

We would like to bring to your attention that concerns about OCR’s lack of dedication to its entire mission – including civil rights enforcement and enforcement of patient privacy protections – is shared by others. The U.S. Commission on Civil Rights noted with respect to OCR’s civil rights enforcement in its 2019 report “Are Rights a Reality? Evaluating Civil Rights Enforcement”, that “[u]nder the Trump Administration, HHS OCR has restructured its office and staffing in a manner to prioritize religious liberty over other civil rights protections.”⁶ The Commission further found that from FY2016 to FY2018, OCR staffing decreased by more than 10 percent in its direct enforcement offices.⁷ This led to a finding that for the agencies reviewed, including HHS OCR, staffing levels had fallen below “any reasonable bare minimum appropriate staffing for civil rights enforcement.”⁸

In addition, U.S Senator Mark Warner, Vice Chairman of the Senate Intelligence Committee and co-founder of the Senate Cybersecurity Caucus, sent a letter to HHS OCR on November 8, 2019 expressing alarm after “medical records of potentially millions of Americans were recently exposed online” and stating “that your agency has done little to address this issue.”⁹ He further noted “that your organization, with its responsibility to protect the sensitive personal medical information of the American people, has done nothing about it.”¹⁰ Finally, we share the Center for Reproductive Rights’ concern that funds collected from enforcement of the Health Insurance Portability and Accountability Act are being misallocated in violation of the law. Section 13410(c) of the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009 restricts OCR’s allocation of settlement funds collected from HIPAA enforcement actions to HHS-OCR solely for further HIPAA enforcement.¹¹ We

⁴ See *Dep’t of Health and Human Svcs.*, Doc. 248 at 80.

⁵ <https://www.hhs.gov/sites/default/files/fy-2020-budget-in-brief.pdf>

⁶ U.S. Commission on Civil Rights, *Are Rights a Reality Evaluating Federal Civil Rights Enforcement*, November 2019 Statutory Report at 503, <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf>.

⁷ *Id.* at 498-99.

⁸ *Id.* at 498.

⁹ Letter from Senator Mark Warner to Roger Severino, Nov. 8, 2019, <https://www.warner.senate.gov/public/cache/files/f/e/fe42b2f9-cfdc-4fd2-b51e-ae23e18fbe76/6776828F4F6A23319BDCBF55F346C72E.final-ocr-letter.pdf> (last visited Nov. 13, 2019).

¹⁰ *Id.*

¹¹ Health Information Technology for Economic and Clinical Health (HITECH) Act, § 13410(c) (2009); HIPAA JOURNAL, *What is the HITECH Act*, <https://www.hipaajournal.com/what-is-the-hitech-act/>.



urge you to investigate whether OCR has systems and processes in place for ensuring compliance and whether it has misallocated funds in violation of the HITECH Act.

The OCR plays a vital role in protecting underserved and marginalized communities, including people of color, women, people with disabilities, and LGBTQ individuals from discrimination in the health care system. The OCR also plays a crucial role in ensuring the privacy and security of patient's personal health information. It is critical that we understand whether resources are being diverted away from these important functions toward unnecessary and ideologically-driven activities in place of enforcing important civil rights and other patient protections.

We urge you to open an investigation into the matters raised in the Center's complaint and to conduct an investigation that is open and transparent to the public. If you have any questions please reach out to Emily Chatterjee (chatterjee@civilrights.org) from The Leadership Conference or task force co-chairs Mara Youdelman (youdelman@healthlaw.com) from the National Health Law Program or Jessi Leigh Swenson (jswenson@nationalpartnership.org) from the National Partnership for Women & Families.

Sincerely,

The Leadership Conference on Civil and Human Rights
Black Women's Roundtable
Center for Law and Social Policy (CLASP)
The Coalition for Disability Health Equity
Hispanic Federation
Human Rights Campaign
National Center for Transgender Equality
National Health Law Program
National Partnership for Women & Families
National Women's Law Center